

EMPLOYMENT NON-DISCRIMINATION ACT OF 2013

Ms. COLLINS. Madam President, I ask unanimous consent that the Senate resume consideration of S. 815 and the pending Portman amendment; that the Toomey second-degree amendment be withdrawn; that the Senate proceed to a vote on the Portman amendment; that upon disposition of the Portman amendment, the previously withdrawn Toomey amendment be made pending as a first-degree amendment to the committee-reported substitute; that a Reid second-degree amendment to the Toomey amendment, which is at the desk, be made pending; that following the reporting of the Reid second-degree amendment, the Senate resume the motion to proceed to Calendar No. 236, H.R. 3204, with all of the above occurring with no intervening action or debate.

The PRESIDING OFFICER. Is there objection to the request?

Without objection, it is so ordered.

Under the previous order, S. 815 is pending, and amendment No. 2013 is withdrawn.

The question is on agreeing to the amendment.

The amendment (No. 2012) was agreed to.

AMENDMENT NO. 2013

The PRESIDING OFFICER. Under the previous order, the Toomey amendment is now pending.

AMENDMENT NO. 2020 TO AMENDMENT NO. 2013

Ms. COLLINS. Madam President, I call up Reid amendment No. 2020.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Maine [Ms. COLLINS], for Mr. REID, proposes an amendment numbered 2020 to amendment numbered 2013.

The amendment is as follows:

At the end, add the following:

This Act shall become effective 1 day after enactment.

Ms. COLLINS. Madam President, I ask for the yeas and nays on the Reid amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

ANTIRETALIATION

Mr. LEAHY. Mr. President, I understand that an amendment was negotiated to clarify the exemption provided to religious organizations in this legislation. This is Senate amendment No. 2012.

I understand that the intent of the antiretaliation provision in the legislation is to strike a balance between providing important protections for religious organizations because of their exemption under section 6(a) of pending legislation and to ensure that this provision does not undermine in any way current or future Federal, State, or local civil rights protections, such as those protections afforded under the laws of my home State of Vermont.

The language of the antiretaliation provision states clearly that nothing in the provision can be construed “to invalidate any other federal, state, or local law or regulation that otherwise applies to an employer” that is found exempt under section 6(a) of ENDA. As I understand it, this means that an exemption for a religious organization under ENDA does not equate to exemption from compliance with any other Federal, State, or local civil rights requirements.

In addition, this provision bars retaliation against a religious organization on the sole basis that the organization is exempt under ENDA. Application of Federal, State, or local civil rights protections to a religious organization exempt under Section 6(a) of ENDA may only be considered retaliation under Section 6(b) if the religious organization demonstrates that the application—through monitoring, enforcement or other means—is solely due to the religious organization’s exempt status under ENDA.

Based on this understanding, I would like to ask Chairman HARKIN if anything in that amendment would modify the important nondiscrimination provision in the Violence Against Women Reauthorization Act that this Congress passed with overwhelming bipartisan support earlier this year.

That provision was a critical component of the reauthorization, and I want to make sure that nothing here overrides what is currently the law of the land. I also want to make sure that States like Vermont can still enforce their own nondiscrimination laws for violations within their jurisdiction, regardless of whether an entity is exempt under the national ENDA legislation.

Mr. HARKIN. I thank the Senator for his question. He is correct, nothing in this amendment would modify the nondiscrimination provision that was included in the Violence Against Women Reauthorization Act. What this amendment does is say that you cannot retaliate against an organization for discrimination in its hiring, firing, compensation, or other terms or conditions of employment if you are an organization that qualifies for the exemption under section 702(a) of title VII of the Civil Rights Act. ENDA’s religious exemption does not create new grounds for liability or penalty.

DRUG QUALITY AND SECURITY ACT—MOTION TO PROCEED

The PRESIDING OFFICER. Under the previous order, the Senate resumes consideration of the motion to proceed to H.R. 3204.

The Senator from Maine.

Ms. COLLINS. That was an extremely complicated parliamentary request. Perhaps it would be helpful to my colleagues if I gave a little bit of explanation of what occurred.

The good news, in my judgment, is that the Senate has adopted by voice vote an amendment proposed by Sen-

ators PORTMAN, AYOTTE, HELLER, HATCH, and MCCAIN. I very much appreciate their willingness to work with the cosponsors and sponsors of this legislation.

Many of the sponsors of this amendment are tied up in hearings, but I expect them to be coming to the floor very shortly to debate this amendment after the fact.

I wish to explain about what the Portman, Ayotte, Heller, Hatch, and McCain amendment does. The underlying bill, ENDA, includes a pretty broad exemption for religious organizations based on current law in title VII. What the Portman, et al., amendment does is it ensures that Federal, State and local government agencies will not be able to discriminate against these exempt organizations. For example, the amendment would ensure that exempt religious organizations cannot be denied grants or contracts for which they would otherwise qualify from government agencies. It also protects them from discrimination by government agencies from participating in government-sponsored activities.

I believe this amendment improves the bill. It ensures these organizations—these religious-based organizations that are exempt under ENDA—cannot be suddenly penalized for having that exemption by being denied grants, contracts, other licenses, fees, or whatever, that they would otherwise be entitled to just solely based on the fact they are exempt under ENDA.

I want to commend Senator PORTMAN, Senator AYOTTE, Senator HELLER, Senator HATCH, and Senator MCCAIN for making sure these important protections are in place, and that if an organization has a legitimate exemption under this bill, the Federal Government or State government cannot discriminate against that organization that is legitimately claiming an exemption under ENDA.

I believe this amendment improves the bill and provides a significant protection for exempt religious organizations, and I am very pleased it was accepted by a voice vote.

I know Senator PORTMAN and Senator AYOTTE are on their way and want to speak on the amendment we just adopted.

Let me explain the second part of the very complicated parliamentary action we just took. At least I will attempt to.

What we have done is to preserve Senator TOOMEY’s right to get a vote on his amendment. It is my understanding that vote will require 60 votes of the Senate in order to be approved, but it essentially guarantees he is next up. He is next in line for a vote. So his amendment will be the pending amendment.

Again, I know this was a complicated process, and I want to thank the Chair who was presiding over the Senate, as well as the floor staff on both sides of the aisle, Senator REID’s staff and Senator MCCONNELL’s staff, in making sure